1959

April 20.

COMMISSIONER OF INCOME-TAX, WEST BENGAL

v.

CALCUTTA NATIONAL BANK LIMITED (IN LIQUIDATION)

(B. P. SINHA, J. L. KAPUR and M. HIDAYATULLAH, JJ.)

Excess Profits Tax—Rental income—Banking Company letting out a part of its own premises—Liability—Excess Profits Tax Act, 1940 (XV of 1940), s. 2(5), Sch. I, r. 4(4).

The respondent was a banking company and the question was whether it was liable to pay excess profits tax on a sum of Rs. 86,000 received by it as rent in respect of the major part of a six-storeyed building owned and constructed by it, which it had let out, the rest being occupied by its headquarters in Calcutta. The Department and the Income-tax Appellate Tribunal found against the respondent but the High Court, on a reference under s. 66(1) of the Income Tax Act, reversed their decision. The Memorandum of Association of the Company provided as one of its objects as follows,—

"(e) To purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property, ... which the company may think necessary or convenient for the purpose of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purpose of the Company."

The question referred to the High Court for decision was whether the said income was part of the business income taxable under s. 2(5) read with r. 4(4) of the Sch. I to the Excess Profits Tax Act, 1940. The High Court held that although the income was derived from the holding of property, since the functions of the assessee company did not consist wholly or mainly in the holding of investments or other property as required by the first proviso to s. 2(5) of the Act, no question of the application of r. 4(4) could arise.

Held, (Per Sinha and Hidayatullah, JJ., Kapur, J., dissenting), that the question must be answered in the affirmative.

Per SINHA, J.—The High Court was fundamentally in error in overlooking the main provision of s. 2(5) of the Act, for even though the first proviso might not apply, that by itself would not render the main provision of the definition, which was wider than that under the Indian Income-tax Act inapplicable.

Commissioners of Inland Revenue v. *Desoutter Bros. Ltd.*, (1945) 29 T. C. 158, applied.

The term 'business' was of wide import and each case had to be determined with reference to the particular kind of activity or occupation of the person concerned. Though ordinarily it implied a continuous activity in carrying on a particular trade or avocation, it might also include an activity which might be called 'quiescent'.

The Commissioners of Inland Revenue v. *The South Behar Railway Co., Ltd.*, (1923) 12 T. C. 687 and *Commissioners of Inland Revenue* v. *The Korean Syndicate, Ltd.*, (1921) 12 T. C. 181, referred to.

The Memorandum of Association of a company provided the key to its business objects and the relevant clause in the instant case clearly showed that the managing of property and realisation of rents therefrom were within the objects of the company, and, therefore, such rents must be included in calculating its profits under r. 4(4) of the Sch. I to the Act.

It was not correct to suggest that the rule, in substituting, the word "partly" for "mainly" occurring in the first proviso to s. 2(5) exceeded the provisions of the statute. Rule 4(4) did not derive its operative force from that proviso, limited to an incorporated body of a particular type, and was of wider application as evident from its own terms as also from the second proviso to s. 2(5) of the Act.

Punjab Co-operative Bank Ltd. v. *Commissioner of Income-tax, Punjab*, (1940) A.C. 1055; [1940] 8 I.T.R. 636 and *Sardar Indra Singh and Sons, Ltd.* v. *Commissioner of Income-tax, West Bengal*, [1954] S.C.R. 167, referred to.

It was not correct to say that if rental income were to be covered by the main clause of s. 2(5), the first proviso to that section would become redundant.

Commissioners of Inland Revenue v. *The Tyre Investment Trust, Ltd.*, (1924) 12 T. C. 646, referred to.

Nor was it correct to say that "business" could not be said to include rental income.

The United Commercial Bank Ltd., Calcutta v. *The Commissioner of Income-tax, West Bengal*, [1958] S.C.R. 79, held inapplicable.

Per KAPUR, J.—The word 'business' could either mean what was contained in the main provision of s. 2(5) or have the extended meaning given by the first proviso to that section. In either case it was inapplicable to the case of the respondent whose essential function was to deal in money and credit, letting out of property being neither wholly or even partly its business. The income received by the respondent, therefore, by way of rent, did not fall within the definition of the word 'profits' contained in s. 2(19) of the Act and was not chargeable to excess profits tax under s. 4 of the Act.

Salisbury House Estate Ltd. v. *Fry*, (1930) 15 T. C. 266,

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Mellows v. *Buxton Palace Hotel Ltd.*, (1943) 25 T.C. 507 and *Commissioners of Inland Revenue* v. *Buxton Palace Hotel Ltd.* (1948) 29 T.C. 329, referred to.

In construing the first proviso, effect must be given to every word used. If the mere owning of immoveable property and the letting out of what was not needed for its own use by a company was intended to be covered by the definition, the use of the words "wholly" or "mainly" would be wholly redundant.

Rule 4(4) of the first Schedule to the Act did not modify the definition of 'business' so far as it related to holding of property and before it could apply, the functions of the company, which meant the activities appropriate to its business, must fall within the definition of 'business' as given in the Act.

Per HIDAYATULLAH, J.—The rents realised by the respondent must be regarded as profits from property held as investment and included in the computation of profits under r. 4(4) of the first schedule.

There was undeniably a difference between the wording of the schedule and the Act and the tendency of the schedule was to widen the definition of business so as to include letting of property for earning rents. It could not, therefore, be said that the definition contained in the Act, wholly controlled the Schedule and r. 4(4) must be given effect to.

Inland Revenue Commissioners v. *Gittus*, (1920) 1 K. B. 563, applied.

Gittus v. *Commissioners of Inland Revenue*, (1921) 2 A.C. 81, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4 of 1956.

Appeal by special leave from the judgment and order dated June 10, 1953, of the Calcutta High Court in Income-tax Reference No. 39 of 1952.

K. N. Rajagopal Sastri, R. H. Dhebar and *D. Gupta*, for the appellant.

B. Sen, P. K. Ghosh and *P. K. Bose*, for the respondent.

1959. April 20. The following Judgments were delivered

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SINHA, J.—The question for determination in this appeal by special leave, is whether the assessee, the Calcutta National Bank Ltd. (in liquidation), is liable to Excess Profits Tax in respect of Rs. 86,000/-, which it realised by way of rent of the building at its headquarters in Calcutta, during the accounting period

ending March 31, 1946. The Department and the Income-tax Appellate Tribunal answered the question in the affirmative. On a statement of the case to the High Court under s. 66(1) of the Income-tax Act, a Bench of the Calcutta High Court (Chakravartti, C. J., and Lahiri, J.) answered it in the negative, reversing the orders of the Department and the Tribunal. As the Bench refused to grant the necessary certificate of fitness, the appellant applied for, and obtained, special leave to appeal, by an order of this Court dated September 27, 1954.

The facts of this case are short and simple. The assessee was a banking company in a large way of business. It owns a six-storeyed building where its offices are located on the ground floor and a part of the 6th floor, while the rest of the building is let out to tenants. The annual rental income derived from the portion let out, is about Rs. 86,000/-. The Tribunal found that the portion let out is about four to five times the floor area of the portion of the building occupied by the assessee for the purposes of its own business. By an order dated March 31, 1949, the Excess Profits Tax Officer assessed the respondent on the said rental income in respect of the accounting period ending March 31, 1946, under sub-r. (4) of r. 4 of Schedule I to the Excess Profits Tax Act, 1940 (XV of 1940) (which hereinafter will be referred to as the Act). On appeal by the respondent, the Appellate Assistant Commissioner, by his order dated January 3, 1950, upheld the assessment on the basis of sub-r. (2) of r. 4 of Schedule I to the Act. He pointed out that the assessee carries on banking business which includes holding investments, and thus, the rental income in respect of its investments in immovable property, is included in its business income, even though it was not chargeable to income-tax under s. 10 of the Income-tax Act. Income from securities, like shares and properties, is chargeable to income-tax under ss. 8, 9 and 12 of the Act; but that head of income is chargeable under the Act as business profits. He also pointed out that the assessee had itself included the value of these assets in the computation of its capital,

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for claiming standard profits. This had been done in the previous years, and the assessee bank had accepted the basis and the computation of capital assets during the previous years. On a further appeal by the respondent to the Appellate Tribunal, the Tribunal held that there was no doubt that the premises were built with a view partly to housing the head office of the company, and partly for the purpose of being let out to tenants, and that it was an investment by the Bank in immovable property. The Tribunal also found that this was within the terms of the Memorandum of Association of the respondent company. Hence, by its order dated March 22, 1951, the Tribunal held that the letting out of so much of the building as was not occupied by the company itself for its own business, was a part of its business, and the rental income was, thus, liable to tax under the Act. It made a particular reference to sub-r. (4) of r. 4 of Sch. I to the Act, though the Department appears to have also relied upon sub-r. (2) of r. 4, aforesaid. Thereupon, the respondent got the Tribunal to state the case to the High Court, and the following question was accordingly referred to the High Court under s. 66(1) of the Income-tax Act :—

"Whether in this case the rental income from immovable property is part of the business income taxable under section 2(5) read with rule 4(4) of Schedule I attached to the Excess Profits Tax Act, 1940."

The matter was heard by the High Court with the result indicated above. Hence, this appeal by special leave.

There is no doubt that excess profits are not chargeable under the Act unless the income falls within the ambit of business profits. Section 2(5) of the Act defines "business" as under :—

"'business' includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession

consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investment or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;".

The definition of "business" under the Act, is wider than the definition of that term under the Income-tax Act (s. 2(4)). Section 2 (19) of the Act defines "profits" as follows:—

"'profits' means profits as determined in accordance with the First Schedule."

Section 2 (20) defines "standard profits" as follows:—

"Standard profits means standard profits as computed in accordance with the provisions of Section 6". And the charging section, s. 4 of the Act, provides that in respect of any business to which the Act applies, excess profits, that is, profits during any chargeable accounting period, exceeding the standard profits, shall be charged, levied and paid. Section 5 of the Act provides as follows:—

"This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of Section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section:

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident

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but not ordinarily resident in British India unless the business is controlled in India;

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business;

Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business." The First Schedule, which contains the rules for computation of profits, provides, in sub-r. 4 of r. 4, as follows:—

"(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under Section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act."

Having set out the relevant provisions of the Act, the first question that arises for consideration, is whether the letting out of the premises in question can be said to be a business of the assessee bank. The definition of "business" is only an inclusive one, and includes any sort of trade, commerce or manufacture. Can it be said that realization of income from its investments which may be either in shares, securities or in immovable properties, is not a part of the business of a banking corporation? In my opinion, it will

be taking a very narrow view of the functions of a bank to hold that such activities are not within the ambit of the business activities of a bank. In the Memorandum of Association of the assessee bank, the objects of the company are stated to be:

"(a) To carry on all kinds of banking business that are generally carried on by Joint Stock Banks..."

"(b) To carry on the business of banking in all its branches and departments, including borrowing, raising or taking up money, the lending or advancing money, securities or properties;.....the acquiring, holding, issuing and dealing with...investment of all kinds;.....the managing of properties....."

"(c) To purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property,.....which the Company may think necessary or convenient for the purpose of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purpose of the company."

Apparently, the bank constructed the six-storeyed building not only for its own use and occupation, but also, according to the finding of the Appellate Tribunal, for the major part, for the purpose of realising rent from tenants. Where land in a big city, like Calcutta, is taken for building purposes, it is common knowledge that erecting a multi-storeyed building, is by itself an investment, besides affording accommodation for the bank to carry on and advertise its business, and house its head-office and records.

The High Court answered the question referred to, in the negative on the ground that though the income was derived from the holding of property, the functions of the assessee-company did not consist wholly or mainly in the holding of investments or other property, as required by the *proviso* to s. 2(5) of the Act. Since the requirement of the first *proviso* to s. 2(5) of the Act, was not satisfied, no question of the application of sub-r. (4) of r. 4, could arise; and even if such a question could arise, the word "business" in that sub-rule, must take its colour from the main provisions of the section. This conclusion was reached by

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the learned Chief Justice, who delivered the opinion of the Court, by starting with the premise that for determining the nature of the income of the company, it was not necessary to consider the provisions of the definition of "business", contained in the main clause of s. 2(5), which was also assumed to be parallel to the connotation of the term "business" under the Indian Income-tax Act. Having, thus, excluded, without giving any reasons why they had to be excluded, the provisions of the main clause of the definition of "business", as contained in the Act, the learned Chief Justice addressed himself to the question whether the first *proviso* to the definition clause, which was in the nature of an additional provision, could govern the facts of the case, and bring it within the ambit of that kind of business to which the Act applied. The learned Chief Justice rightly pointed out that the first *proviso* is limited to incorporated bodies and had no reference to individuals. Then, the learned Chief Justice observed: "It is to be noticed that in the contemplation of this proviso, property is something different from investments, for it speaks of 'investments or other property'. It is also to be noticed that if the requirements of the proviso are satisfied, the holding of investments or other property shall be 'deemed to be a business', which implies that it is not really a business and, but for the special provisions made by proviso, would not be within the general definition contained in the main clause". It is doubtful whether these observations are entirely correct, but, as will presently appear, we are not so much concerned with the *proviso* as with the main provisions of the definition clause (s. 2(5)). The conclusion of the learned Chief Justice may better be stated in his own words, as follows:—

"It appears to me that the first matter to which we must address ourselves in answering the question before us is: are the functions of the assessee company such that the holding of the building in question or buildings or other property and investments in general must be deemed to be its business for the purposes of the Excess Profits Tax Act under the first

proviso to section 2(5)? In order that that question may be answered in favour of the Revenue, it is necessary that the holding of investments or other property should be the only or the principal function of the assessee company. As I have said, the assessee company is a banking company in a large way of business. It is hardly disputable, and indeed it was not disputed before us, that the holding of investments or other property was not its sole or primary occupation, much less the holding of the particular building in question".

In my opinion, the aforesaid conclusion of the High Court suffers from two fundamental errors, namely, (1) that the main clause of the definition section is out of the way in determining the present controversy, and (2) that it was the *proviso* only which had to be considered in order to answer the question referred. In the first instance, the learned Chief Justice is not entirely correct in observing that the definition of the term "business" follows the definition of the same term in the Indian Income-tax Act. As already observed, the definition under the Act, is wider than that under the Income-tax Act, in so far as it includes certain types of profession or vocation. The scheme of the Act, as compared to that of the Income-tax Act, will have to be considered presently, but it is enough to point out that the connotation of the term "business" under the Act, is wider than that of the same term under the Income-tax Act. The learned Chief Justice set aside, from his consideration, the provisions of the main clause of s. 2(5), and did not indicate his reasons for doing so. Ordinarily, the Court has first to consider whether the main clause of the definition of the term "business", would govern the facts of the case. The question of the application of the first *proviso*, which, it is common ground, is in the nature of an additional provision which brings within its ambit certain types of income (to use a neutral term) which would not otherwise have come within the terms of the main clause of the definition, can arise only if the Court first comes to the conclusion that the main clause of the definition is out of the way. I will

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assume that the holding of investments or other property, is not the whole or main business of the Respondent Company. That assumption will put aside the first *proviso* aforesaid, but that does not by itself lead to the inference that the main provision of the definition clause, cannot be applied to the respondent. An argument on these lines was advanced, and was repelled by Lord Greene, M. R., in the case of *Commissioners of Inland Revenue* v. *Desoutter Bros., Ltd.* (1). In that case, sub-s. (4) of s. 12 of the Finance (No. 2) Act, 1939, which deals with Excess Profits Tax, was under consideration by the Court of Appeal. The learned Master of Rolls considered the question, and made the following observations which apply with full force to the arguments which found favour in the High Court:—

"The first argument is based on the language of Section 12(4) of the Finance (No. 2) Act, 1939, which deals with Excess Profits Tax. The first Sub-section speaks of the profits 'arising in any chargeable accounting period from any trade or business to which this section applies'. It is in respect of those profits that the tax is exigible. It will be observed that the language only extends to the profits arising from 'any trade or business'. Sub-section (4) says 'Where the functions of a company or society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this section to be a business carried on by the company or society'."

"I should have thought that the objects of that Sub-section were manifest. In my view it was intended, and quite clearly intended, to bring into the net a type of corporation which otherwise would or might have escaped it. The commonest type of corporation with which the Sub-section is dealing is what may be called a trust investment company, whose business is the holding of investments and deriving income from them. Such a corporation would not be said to be carrying on a 'trade or business' within the meaning of

(1) (1945) 29 T.C. 155, 160.

Sub-section (1). Anyhow, if it were not absolutely clear, Sub-section (4) makes it quite certain that that type of corporation is to be included, and its operations are to be regarded as the carrying on of a trade or business. That seems to me to be the real and sole object of Sub-section (4)."

"The argument really amounted to this: by implication the profits from investments or property held by any other type of corporation is excluded. I cannot begin to see the shadow of a foundation for any such argument. In my opinion it breaks down completely once the real significance of Sub-section (4) is appreciated."

I respectfully adopt the reasoning and the conclusion arrived at by the Court of Appeal, extracted above. It follows that the first *proviso* to s. 2(5) does not determine the controversy arising in this case. This conclusion completely displaces the ratio of the opinion of the High Court, but it does not answer the question referred to it. It has, therefore, to be considered whether the main definition clause in s. 2(5) can come into play in giving the answer to the question referred for the opinion of the High Court. The term "business" is a word of very wide, though by no means determinate, scope. It has rightly been observed in judicial decisions of high authority that it is neither practicable nor desirable to make any attempt at de-limiting the ambit of its connotation. Each case has to be determined with reference to the particular kind of activity and occupation of the person concerned. Though ordinarily "business" implies a continuous activity in carrying on a particular trade or avocation, it may also include an activity which may be called 'quiescent'. This is illustrated by the case which went up to the House of Lords in *The Commissioners of Inland Revenue* v. *The South Behar Railway Co., Ltd.* (1). In that case, the facts were these. Down to 1906, the South Behar Railway was held by the Respondent Company and worked by another Company on behalf of the Secretary of State for India, the Respondent Company being entitled to a share in the

(1) (1923) 12 T. C. 657.

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profits in consideration of its having supplied funds and materials for the construction of the Railway. In 1906, the Respondent Company relinquished possession of the Railway to the Secretary of State, on the stipulation that until the option to purchase was exercised, a fixed annuity of £ 30,000 should be paid to the Company in lieu of the share of profits so far paid. After that arrangement in 1906, the Company did nothing but receive and distribute the said annuity to its share-holders. It was held by the House of Lords that the Company was carrying on a trade or business, and was, therefore, liable to Corporation Profits Tax. The House of Lords, while affirming the decision of the Court of Appeal, observed that the finding of the Commissioners, which was reversed by the Court of Appeal, was not a finding of pure fact, but was an inference of law, derived from the specific facts found in the case, and that, consequently, the decision was open to review. The House of Lords, in upholding the decision of the Court of Appeal, observed that by the agreement of 1906, the Company's income, which previously was a fluctuating income derived from the share of the profits, had been converted into a fixed annuity irrespective of the earnings of the Railway; and that the new arrangement did not materially affect the position of the Company as a business concern. The House of Lords approved of the decision in the case of the *Commissioners of Inland Revenue* v. *The Korean Syndicate, Ltd.* (1). In that case, a Syndicate was registered in 1905 as a Company for the purposes of acquiring and working concessions and turning them to account, and of investing and dealing with any moneys not immediately required. In 1905, the Syndicate acquired part of a right to a concession in Korea, which included a gold mine, but in 1908, it assigned its rights to another Company under an agreement of lease in consideration of certain royalties, but which were really a percentage of the profits in working the property. In 1911, the Syndicate placed in deposit at a bank, certain sums of money received from the sale of shares which had

(1) (1921) 12 T.C. 181.

been obtained by the Syndicate in exchange for other shares. During the relevant period, the Syndicate's activities were confined to receiving bank interest and royalties and distributing that income amongst its shareholders. Rowlatt, J. held that the Company was not carrying on a business. On appeal, it was held that the Syndicate was carrying on a business, and that the profits derived therefrom, were liable to Excess Profits Tax. In order to ascertain the business of a Company, its Memorandum has to be looked into. The Memorandum provides the key to what the business objects of the Company are, and it has further to be ascertained whether those objects are still being pursued. In the present case, the relevant clauses of the Memorandum of Association, have been set out, and there cannot be the least doubt that the managing of property and realisation of rents therefrom, was within the objects of the Company, if it found it necessary and convenient for carrying on its business. It may be that this line of business activity may not be the main part of its business, but even so, if realisation of rent is one of the sources of business income to the Company, it has got to be included in the computation of its profits for the purposes of the Act. This becomes clear on a reference to sub-r. (4) of r. 4, quoted above. But it has been contended that the words " wholly or partly " in the Rule, are in excess of the provisions of s. 2(5), where, in the first *proviso*, the words are " wholly or mainly ". The suggestion is that the rule, in so far as it substituted " partly " for " mainly ", is in excess of the provisions of the statute. In my opinion, this argument is based on an assumption which is not well-founded. As will presently appear from an examination and comparison of the provisions of the Act and the Income-tax Act, r. 4(4) does not necessarily derive its operative force from the first *proviso* to the main clause of the definition in s. 2(5). The *proviso*, as already observed, is limited to an incorporated body of a particular type, and has reference to the " holding of investments or other property ". Rule 4(4) is of a more general application to

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a "business which consists wholly or partly in the letting out of property on hire". In the rule, a reference to s. 9 of the Indian Income-tax Act, also makes it clear that the rule is concerned with "property". It is also clear that the basis for taxation of property under s. 9 of the Income-tax Act, is different from the basis of taxation under the Act, in respect of income from property, and the latter is irrespective of whether income from property has been the subject-matter of charge under the Income-tax Act. In this connection, a reference to the second *proviso* is also relevant in so far as it implies that a person may carry on businesses of different kinds, and all those different lines of business have, for the purposes of the Act, to be treated as one business. Thus, the Bank may be carrying on the business of holding deposits, securities and property, as also lending money on different kinds of securities. Its income from all those activities, would have to be taken into account in order to determine its total business profits. A similar question arose in the case of *Punjab Co-operative Bank, Ltd.* v. *Commissioner of Income-tax, Punjab* (1), which went up to the Judicial Committee of the Privy Council. In that case, the question arose whether the realisation of higher values by sale and purchase of shares and securities by the Bank, could be said to be business profits, and thus, taxable, under the Indian Income-tax Act. On behalf of the Bank, it had been contended throughout, without success, that the realisation of higher values by the sale of shares and securities, was not a separate business of the Bank, but was in the way of its business as a banking corporation which had to deal with money and credit, and that the Bank had always to have in its hands, cash and easily realisable securities to meet any probable demands by its depositors. But it had been found as a fact that the Bank had been selling shares and securities not only for the purpose aforesaid, but also for augmenting its reserve funds. It was held by the Judicial Committee that it had been rightly decided by the Department and by the High Court, on a

(1) (1940) A C. 1055 ; [1940] 8 I.T.R. 635.

reference, that the purchase and sale of shares and securities were a part of the banking business of the Company, and the profits, thus, realised were liable to income-tax. Their Lordships of the Judicial Committee also observed that it was not necessary to establish that the Bank had been carrying on a separate business of buying and selling shares and investments in order to make profits thus made taxable. Once it is found that such transactions were entered into by the Bank not merely with a view to realisation or change of investments, but with a view to carrying on a business in the sense of earning profits, the Bank was really carrying on a business within the meaning of the Income-tax Act.

Following this decision of the Privy Council, this Court decided in the case of *Sardar Indra Singh and Sons Ltd.* v. *Commissioner of Income-tax, West Bengal* (1) that the question whether a certain income is profit from business and not an appreciation of capital arising from a change of investment, depends upon the answer to the further question whether that income was so connected with the carrying on of the assessee's business that it could fairly be said that it is the profits and gains of the business in its normal working. It was not necessary further to show that the income had resulted from a course of dealing which, by itself, would amount to the carrying on of a business. In that case, the assessee company had, as one of its objects to carry on the business of financiers, and to purchase and sell stock, shares, business concerns and other undertakings. In carrying out that objective, the company held a large number of shares in other companies, and was realising its holdings and acquiring new shares. In the background of those facts, it was held by a Bench of five Judges of this Court, that the profits made from the sale of investments and the making of fresh investments, were assessable to income-tax. In the course of his judgment, Patanjali Sastri, C. J., speaking for the Court, made the following very pertinent observations :—

" The principle applicable in all such cases is well

(1) [1954] S.C.R. 167, 170, 171.

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settled and the question always is whether the sales which produced the surplus were so connected with the carrying on of the assessee's business that it could fairly be said that the surplus is the profits and gains of such business. It is not necessary that the surplus should have resulted from such a course of dealing in securities as by itself would amount to the carrying on of a business of buying and selling securities. It would be enough if such sales were effected in the usual course of carrying on the business or, in the words used by the Privy Council in *Punjab Co-operative Bank Ltd.* v. *Income Tax Commissioner, Lahore* (1), if the realisation of securities is a normal step in carrying on the assessee's business. Though that case arose out of the assessment of a banking business, the test is one of general application in determining whether the surplus arising out of such transactions is a capital receipt or a trading profit."

But the learned counsel for the Respondent Bank argued that in the present case, the earning of rental income by the Bank could not come within s. 10 of the Income-tax Act, and the definition of "business" in the Act and in the Income-tax Act, in so far as they are relevant to the present case, must be the same. In other words, it was contended that as realisation of rents from house property of the Bank, could not come within the purview of s. 10 of the Income-tax Act, it could not also come within the purview of the Act we are now concerned with. In my opinion, there is a fallacy in this argument. The scheme of the two Acts is not the same. The Income-tax Act has brought within its taxing ambit, not only income from what is ordinarily called business, but income from several other sources. Sections 3 and 4 of the Income-tax Act render liable to tax "all income, profits and gains from whatever source derived", and s. 6 of the Income-tax Act, classifies the different heads of income, profits and gains into (1) salaries, and the manner of charging the same is laid down in s. 7; (2) interest on securities, and the manner of charging the tax is laid down in s. 8; (3) income from property, to be taxed in

(1) (1940) A. C. 1055; [1940] 8 I. T. R. 635.

accordance with the provisions of s. 9; and (4) profits and gains from business, profession or avocation, to be taxed in accordance with the provisions of s. 10. The fifth and the sixth heads of income may be omitted from the present discussion. On the other hand, under the Act in question, only tax on excess profits, arising out of certain businesses, has been imposed. The Act is not concerned with all kinds of income, but only with profits if made beyond a certain standard laid down under the Act, from business described in s. 5. Under the Act, the ambit of the term "business" covers the fourth head, though not the whole of it, as also the second and the third heads, set out above, again though not, perhaps, the whole of them. It is not, therefore, correct to say that what would not come within the ambit of s. 10 of the Income-tax Act, would also not come within the ambit of the Act. On a proper construction of the provisions of the Act, it has got to be held that what has been covered by ss. 8, 9 and 10, at least in parts, of the Income-tax Act, comes within the purview of the Act. This is not intended to be a complete statement of the comparative ambits of the two Acts, but it is enough to dispose of the argument that business, as understood under the Act, is completely covered by the provisions of s. 10 of the Income-tax Act.

In this connection, another argument advanced by the learned counsel for the respondent, as an additional reason for not treating rental income as coming within the purview of the Act, may now be considered. It was argued that the first *proviso* to s. 2(5), set out above, would become redundant if rental income were to be covered by the main clause of the definition. This argument again ignores some of the crucial words of the *proviso*. It speaks only of "holding of investments or other property", which is not the same thing as dealing with shares, investments or other property. This *proviso* was, perhaps, inserted out of abundant caution to repel arguments, like those advanced in the case of *The Commissioners of Inland Revenue* v. *The Tyre Investment Trust Ltd.* (1). In that case, the Respondent Company was incorporated in 1917, with the

(1) [1924] 12 T.C. 646.

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main objects of acquiring and holding shares, etc., and was formed mainly with a view to acquiring shares in two foreign companies and selling them to an English Company which was likely to be interested in them. After the Respondent Company had purchased the shares, it took an active interest in the affairs of those two companies, and in 1920, negotiations were proceeding for the sale of those shares. The Company was assessed to Excess Profits Duty. On appeal, the Special Commissioners accepted the argument on behalf of the Company that it was not carrying on a trade or business within the meaning of the taxing statute, and that it was only a holding company and stood in the same position as an individual who had acquired and held investments. On appeal by the Revenue, it was held in the King's Bench Division that the principal business of the Company consisted of making investments, and was, therefore, liable to Excess Profits Duty.

In support of the second branch of his argument that rental income was not included in "business", the learned counsel for the respondent called our attention to the decision of this Court in *The United Commercial Bank Ltd., Calcutta* v. *The Commissioner of Income-tax, West Bengal*, (1) with special reference to the observations at p. 97 to the effect that various heads of income, profits and gains, under the Income-tax Act, must be held to be mutually exclusive, each head having been meant to cover income from a particular source. The case before their Lordships was concerned with the question of set-off of the carried-over loss of the previous year. That case was not in any way concerned with the provisions of the statute now before us. It was concerned only with the scheme of the Income-tax Act, with particular reference to the classification of income into different heads. That case does not throw any light on the interpretation of the term "business".

In view of the considerations set forth above, it must be held that the realisation of rental income by the assessee Bank, was in the course of its business in

(1) [1958] S.C.R. 79.

prosecution of one of the objects in its Memorandum; it was, therefore, liable to be included in its business profits, and thus, was assessable to Excess Profits Tax. The appeal must, therefore, be allowed with costs here and below.

KAPUR, J.—I have read the judgment prepared by my learned brother Sinha, J., but I respectfully disagree with it and my reasons are these:

The sole question for decision is whether a sum of Rs. 86,000/- received by the respondent during the chargeable accounting period ending March 31, 1946, as rent of its building at Calcutta can be included in the profits of its business for the purposes of Excess Profits Tax. The respondent—the assessee—was a banking company which at one time did considerable banking business but it has gone into liquidation. It owned a six storeyed building in a commercial locality of Calcutta. During the relevant period it was occupying the ground floor and a portion of the sixth floor and had let out the rest to tenants for which it received the sum of Rs. 86,000/- as rent, which is the amount now in controversy.

The liability of this sum to Excess Profits Tax depends upon the interpretation of the relevant provisions of the Excess Profits Tax Act (Act XV of 1940) (which for the sake of brevity will hereinafter be termed the Act). The object of the Act was to impose a tax on excess profits which as the very name implies must have reference to and be the result of a business activity. Such profits for the purposes of the Act were to be computed in the manner provided by the Act. The scheme of the Act is as follows:—

Section 2 is the definition section; s. 4 the charging section and s. 5 deals with the application of the Act. Section 6 is a provision for determining standard profits and their computation. Excess Profits Tax was chargeable on the excess of profits during the chargeable accounting period over the standard profits, i.e., profits during the standard period. Section 5 of the Act provides:—

"This Act shall apply to every business of which

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any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act 1922....."

The charging section under the Act is s. 4, the relevant portion of which is:

"Charge of tax: (1) Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits....."

Thus the Act applies to every business, any part of the profits of which are chargeable to income-tax (s. 5) and in respect of any business to which the Act is applicable, excess profits tax shall be chargeable on the amount by which the profits during the chargeable accounting period exceed the profits during the standard period (s. 4). It is in respect of those profits that the tax is exigible. In order to determine whether income received during a chargeable accounting period is for the purposes of the Act "profits" arising out of "Business" or not it becomes necessary to examine what these words, i.e., "Business" and "profits" mean. Section 2(5) of the Act defined "Business" as follows:—

"'Business' includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consists wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of

this definition to be a business carried on by such company or society:

Provided further that all business to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act".

The definition of "business" in the main section, i.e., s. 2(5) is analogous to the definition of "business" as given in s. 2(4) of the Income Tax Act; but proviso (1) to s. 2(5) of the Act enlarges the scope of the word "business" in the case of companies and societies incorporated under any enactment. The words "deemed to be" make something "business" which otherwise it would not have been. In the case of an incorporated company therefore business under the Act is not merely any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture but also that which is deemed to be business under proviso (1) which makes the holding of investments or other property by an incorporated Society or company business if one of the following two conditions is fulfilled, e.g.,

(1) If its functions consist wholly or mainly in the holding of investments; or

(2) If its functions consist wholly or mainly in the holding of other property.

It is manifest from this that in the absence of the proviso (1) to s. 2(5) of the Act the word "business" would comprise no function beyond what it comprises under the Income Tax Act and such functions as the holding of investments or the holding of other property would escape the operation of the Act. The heads of income falling under s. 6 (ii), 6 (iii) and 6 (v) of the Income Tax Act, i.e., of interest on securities, and income from property and income from other sources are not business in the Income-tax Act and would not be business within the Act. This Court in *United Commercial Bank Ltd.* v. *Commissioner of Income-tax* (1) held that the heads of income mentioned in s. 6 of the Income-tax Act are mutually exclusive, each head being specific to cover the item

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arising from a particular source and therefore even if securities are held as trading assets or dealt with in the course of a business by a banker or a dealer in securities the interest must be charged and computed under the head "Interest on securities" under s. 8 of the Income-tax Act and not as business profits under s. 10 of that Act. This wider connotation of the word "business" in the Act was clearly intended to bring within its net those incorporated societies and companies which otherwise would or might have escaped it. One such company would be a trust investment company whose business is the holding of investments and getting profit therefrom. Such a company cannot be said to be carrying on business, i.e., any trade, commerce or manufacture within the meaning of the main provision, i.e., s. 2(5) but it is the proviso which makes it clear that that type of a company is included and its operations are to be regarded as carrying on of a "business". See also *Commissioners of Inland Revenue* v. *Desoutter Bros., Ltd.* (1). Another such company or society would be a housing society or company which owns houses for the purpose of letting on rent. Such a company or society also cannot be said to be carrying on business within the definition in the main sub-s. (5) of s. 2. Under proviso (1) however that class of company or society would also be deemed to be carrying on "business". In both these cases their profits would be chargeable to excess profits tax.

The word "profits" in s. 2(19) of the Act means "profits as determined in accordance with the First Schedule" which provides the method of computation of "profits". Rule 4 of this Schedule deals with income from investments and is as follows:

"(SEE SECTION 2(19))

"Rules for the computation of profits for purposes of Excess Profits Tax

1. .....

2. .....

3. .....

4. (1) "Income received from investments shall be included in the profits in the cases and to the

(1) (1945) 29 T.C. 155, 160.

extent provided in sub-rules (2), (2A) and (4) of this rule and not otherwise.

4(2). In the case of the business of a building society, or of a money-lending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Indian Income Tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax ".

(2A). In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purpose of that part of the business, being income to which the persons carrying on the business are beneficially entitled ".

Sub-rule (1) deals with business which consists wholly or mainly in the dealing in or holding of investments in the case of various kinds of companies mentioned and sub-rule (2A) deals inter alia with banking business. The respondent being a banking company its business essentially consists in dealing with money and credit. Such a company has always to keep cash or realisable securities and other realisable investments in order to meet withdrawals by depositors and the holding of such securities and other investments would be the holding of " investments " and that is its normal and main activity. *Punjab Co-operative Bank Ltd.* v. *Commissioner of Income-tax, Punjab* (1). See also s. 277F of the Indian Companies Act which is now a part of the Banking Companies Act. Therefore the respondent qua the holding of investments of this kind, was carrying on business under proviso (1) to s. 2(5) of the Act but it is not that kind of business which is the subject matter of controversy in this appeal. What we have to decide is was the income received as rents from the portion of the respondents'

(1) [1940] 8 I.T.R. 635 (P.C.).

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Calcutta building which was not required by the respondent for its own purposes and let out on hire profit within s. 2(19) and chargeable under s. 4 of the Act.

Two arguments were addressed in favour of the contention that such income was profits of business within the Act: (1) that the laying out of money in a multi-storeyed building was itself an investment and (2) that even if the business consisted partly in letting out of property the income from that property was profit within the Act.

In support of the first submission it was argued that one of the objects in Memorandum of Association was the acquisition of immoveable property which the company may think convenient for the purpose of its business and therefore the construction of a multi-storeyed building would itself be an investment. Reference was made to cl. (e) of the Memorandum of Association which relates to acquisition of moveable and immoveable property. This clause is as follows:—

"(e) To purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property.....which the Company may think necessary or convenient for the purpose of its business, and to construct, maintain and alter any building or works necessary or convenient for the purpose of the Company".

Now this argument loses sight of the fact that the Legislature has chosen to use two words "investments" and "other property" with a disjunctive "or" in between. To both these words a meaning must be assigned because it cannot be said that one or the other of them is redundant or they mean the same thing. "Investments" has been defined thus: "something acquired as a result of laying out money is an investment: *Commissioners of Inland Revenue* v. *Rolls Royce Ltd.* (1) but this general test as a test was not accepted in a later case, *Commissioners of Inland Revenue* v. *Desoutter Bros. Ltd.* (2) at p. 161 where Lord Greene said:—

"Speaking for myself, I am always disinclined to

(1) (1941) 29 T. C. 14. (2) (1945) 29 T. C. 155, 160.

accept any general definition or test for the purpose of solving this type of question. The question whether or not a particular piece of income is income received from an investment must, in my view, be decided on the facts of the case".

In every case the facts have to be ascertained and then the question can be determined whether the profits arising from a particular function are business profits within the Act or not. As above stated the essential function of a banking company consists in money and credit and to carry on such functions it has to hold investments which under the Income-tax Act would fall under ss. 8 and 12. See also s. 277F of the Companies Act of 1913 which is now incorporated in the Banking Companies Act. Property is a word of wide connotation and includes moveable and immoveable properties, all interests therein and even investments would fall within that word but in the context it would not comprise "investments".

If a Banking Company as in the present case constructs a multi-storeyed building used a part of it and lets out the rest it cannot be said to carry on "business" unless its main function is the holding of property and we have already seen that the main function of a Banking Company is dealing in money or credit and for that purpose it holds investments in the form of easily realisable securities. Merely because for the carrying out of its functions a Banking Company constructs a building its functions will not change from that of a Banking Company into one of a company engaged in the letting out of property on hire.

As the Excess Profits Tax is a taxing measure and the object of the Act also is to tax excess profits it is reasonable to say that the words "investment" and "property" as used in the case of a Banking Company are used in the same sense as they are used in the Income-tax Act but if their holding by the company is its sole or main function then they will be deemed to be business so as to make the income derived therefrom chargeable to excess profits tax even if otherwise they

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would not have been so chargeable. The two enactments are in *pari materia* and are intended to charge tax on income, profits and gains only the Act is confined to "profits" of "business" as therein defined and income-tax is chargeable on all incomes, profits and gains. If the mere owning of immoveable property and letting out that portion which was not needed for its own use by a company was intended to be covered by the definition then the use of the word wholly or mainly would be wholly redundant. In construing the proviso effect has to be given to every word used.

The word "functions" is defined in the dictionary to mean "activities appropriate to any business" and if that is substituted in the proviso to s. 2(5) it would read "where the activities appropriate to any business.....consist wholly or mainly in the holding of investments or other property". So read, can it be said that the activities appropriate to the business of a banking company consists wholly or mainly in the holding of a multi-storeyed building or such other property for the purpose of letting out the unused portion on hire. Obvious answer to this question would be in the negative. It is manifest that rents received from the multi-storeyed property are not income received from a "business" within the Act. It is not a trading receipt in the case of banking company. Under the Income-tax Act it falls under s. 9 and there is nothing to indicate in the definition of the word "business" as given in the main portion of s. 2(5) of the Act that it has a different complexion there. In the case of hotel proprietors it has been held that compensation paid by the Crown for requisitioning, during the war, of hotel premises is not its trading profits. *Salisbury House Estate Ltd.* v. *Fry* (1); *Mellows* v. *Buxton Palace Hotel Ltd.* (2). Even under the enactment imposing Profits Tax corresponding to our Excess Profits Tax it was held not to be income receivable from "investments or other property". *Commissioners of Inland Revenue* v. *Buxton Palace Hotel Ltd.* (3).

(1) (1930) 15 T.C. 266. (2) (1943) 25 T.C. 507.
(3) (1948) 29 T.C. 329, 333.

But it was urged that sub-r. (4) of r. 4 of Schedule I lays down a different method of computation and qualifies the qualities of a business when it relates to holding of property. Sub-rule (4) of r. 4 is as follows:—

"In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act".

But before this rule becomes applicable the functions of the company have to fall within the definition of "Business" as given in the Act. The definition Schedule I is confined to computing of profits and has relation to s. 2(19) wherein it is mentioned. It cannot be used to affect the quality of the word "business" as used in the Act. It only means that when the functions of a company, i. e., "the activities appropriate to any business" consist wholly or mainly in the holding of "other property" then in the case of that portion of the business which wholly or partly consists in the letting of property for hire the income from the property shall be included in "profits" in spite of the fact that the income has been assessed under s. 9 of the Income Tax Act. It is a far step from saying that the definition of "business" has been modified by sub-r. (4) of r. 4. It relates to a business of letting out of property. The word "business" can either mean what is contained in the main provision in s. 2 (5) or the extended meaning given by the first proviso of that section. In either case it is inapplicable to the case of the respondent. It cannot be said that letting out of property is either wholly or even partly "business" of the respondent.

In my view the income received from rents of the portion of the building let out on hire, i. e., Rs. 86,000/- does not fall within the word "profits" as used in the Act and is not chargeable to Excess Profits Tax. The judgment of the High Court is therefore sound and I would dismiss this appeal with costs.

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HIDAYATULLAH, J.—I have had the advantage of reading the judgments of my learned brothers, Sinha and Kapur, JJ. I agree with Sinha, J., that the appeal must be allowed with costs here and below.

The question which was referred for the opinion of the Calcutta High Court was whether in this case rental income from immovable property was part of the business income taxable under s. 2(5) read with r. 4 (4) of Sch. I attached to the Excess Profits Tax Act, 1940. In my opinion, the question must be answered in the affirmative for the following reasons.

The Calcutta National Bank, Ltd. (in liquidation) hereinafter called the Bank, was doing business as a bank prior to going into liquidation. Its income, it appears, was also subject to excess profits tax in the past, and we are concerned in the present case with the chargeable accounting period ending March 31, 1946. The Bank had constructed a six-storeyed building, of which it occupied the ground and the top floors. The rest of it was rented out, and in the chargeable accounting period, rents totalling Rs. 86,000/- were received by the Bank. The question was, as already stated, whether this rental income was chargeable to excess profits tax under the Act. According to Kapur, J. the renting out of a building was not the business of the Bank within the definition of 'business' in the Act. This income, therefore, was not properly assessable to excess profits tax. Sinha, J. holds the contrary view.

Under the Act, the charge of tax is laid on any business to which the Act applies. The Act does not define 'business' exhaustively, but shows what may be included in it. The definition follows to a point the definition given in the Indian Income-tax Act, but by a proviso which enlarges its scope, provides as follows:

"Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society."

The charging section is s. 4, and it, shortly, provides that the charge is laid on the amount by which the profits in a chargeable accounting period exceed the standard profits of a business. According to another definition, "profits" mean profits as determined in accordance with the First Schedule of the Act. In the schedule which is enacted as part of the Act, r. 4 (4), to which reference has been made in the question, reads as follows:

"In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act."

The difference between the definition of 'business' and the rule above quoted is that while the former mentions that the business must be *wholly* or *mainly* holding of investments or other property, the rule says that if the business consists wholly or partly of letting out of property, the income of the property shall be included in the profits.

Kapur, J., is of the opinion that the business of the Bank being quite different, the rule cannot be made applicable, because the definition requires that the assessee's business should be wholly or mainly the holding of investments or other property. He also thinks that there is neither holding of an investment nor of property as investment.

The definition of the term 'business' in the Act is helpful where it applies, but not being an exhaustive one, it cannot shut out something which can be appropriately described as a business. Even the opening words of the definition show that it is meant to cover most of the activities designed to produce income or profits or gain. Under the Memorandum of Association, the Bank can acquire property, just as it acquires investments for purposes of its business and even otherwise. Clause (e) enables the Bank to purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property, which the Bank

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may consider necessary or convenient for the purpose of its business and to construct, maintain and alter any buildings or works necessary or convenient for the purpose of the Bank. The acquisition of a six-storeyed building was, therefore, within the terms of the Memorandum, and the only question is whether the income from such building, if rented out, can be taken as profits of the Bank for purposes of excess profits tax.

The definition mentions the holding of investments or other property, and the words "other property" must necessarily take their colour from what precedes, that is to say, "investments". The holding of other property must itself be investment for earning profits; otherwise, the definition does not apply. The word 'investments' is a word of large import. In one sense, every mode of application of one's money intended to yield a return by way of interest, income or profit is investment. When the Bank builds a building more than necessary to house itself and with a desire to earning rents from it, it cannot but be stated that the building was constructed as an investment, or in other words, the Bank was holding "other property" within the meaning of the definition, in addition to the investments which it is the normal business of the Bank to hold. In my opinion, the income from the property would be regarded as profits from property held as investment, and the profits will have to be calculated, as laid down in Sch. I, r. 4(4).

The only difficulty is in the change of language between the definition and the rule, inasmuch as the former speaks of the business which is wholly or mainly the holding of investments or other property, and the latter speaks of a part of the business being the letting out of property. Kapur, J., is of the view that the section defining the word 'business' must prevail, because the Schedule is enacted only for the purpose of computing the profits, as laid down in the definition and as the heading of the Schedule shows. That there is a difference between the Schedule and the Act is not to be denied, and the question that naturally falls for consideration is whether the

Schedule should be given effect to independently in the circumstances of the case. The Schedule really tends for the purposes of collection, to widen the definition of a business to include any letting of property for earning rents. The rule to be applied was stated by Lord Sterndale, M. R., in *Inland Revenue Commissioners* v. *Gittus* (1) in the following words:

"It seems to me there are two principles or rules of interpretation which ought to be applied to the combination of Act and schedule. If the Act says that the schedule is to be used for a certain purpose and the heading of the part of the schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the schedule as though the schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the schedule or by the purpose mentioned in the Act for which the schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the schedule and the definition of the purpose of the schedule contained in the Act."

In my opinion, the second of the two propositions laid down by Lord Sterndale, M. R., applies to the exposition of the Schedule, with which we are concerned. It may be pointed out that the decision of Lord Sterndale, M. R., was accepted by the House of Lords without question in *Gittus* v. *Commissioners of Inland Revenue* (2) in an appeal from the decision of the Court of Appeal in the earlier case.

Though the heading of the Schedule and the definition of the word 'profits' show that the Schedule is designed to assist in the computation of profits, the mention of other kinds of businesses in r. 4, taken with an incomplete definition of the term in the Act, clearly

(1) (1930) 1 K.B. 563, 576. (2) (1921) 2 A. C. 81.

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shows that the legislature was defining the term 'business' as and when necessary, as it laid down the rules for calculation of profits of a business. It was including different kinds of businesses within the Act and indicating how in those cases the profits had to be calculated. I do not think that the definition given in the Act can be said to control everything in the Schedule, in spite of the definition of 'profits' and the heading given to the Schedule. As I have said above, the second of the two alternatives is really applicable to the present case.

For these reasons and those given by my brother, Sinha, J., I hold that this appeal should be allowed with costs here and below.

BY THE COURT.—In accordance with the judgment of the majority, the decision under appeal is set aside and the appeal is allowed with costs here and below.

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April 21.

RAM GOPAL

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ANANT PRASAD AND ANOTHER

(S. K. DAS, A. K. SARKAR and K. SUBBA RAO, JJ.)

Appeal—Maintainability—Permit to run stage carriage—Application for renewal—New applicant's application for permit—Order by State Transport Authority renewing permit but no order passed on new applicant's application—Appeal to Appellate Tribunal against order granting renewal—Whether appeal competent—Motor Vehicles Act, 1939 (4 of 1939), ss. 47, 57, 58, 64.

The appellant who was the holder of a permit to run a stage carriage, which was about to expire, made an application to the State Transport Authority for its renewal for a further period. The respondent made a representation against the renewal of the appellant's permit and also applied for the grant of the permit to himself. The State Transport Authority made an order in the terms "Renewed for three years" in respect of the appellant's permit but no express order was made on the respondent's application for the grant of the permit to him. On appeal by the respondent, the Appellate Tribunal cancelled the appellant's permit and granted the permit to the respondent. The appellant then moved the Judicial Commissioner, Vindhya Pradesh, for a